

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.25200 of 2019**

Sakhi Chand Mahto, aged 61 years, Male Son of late Bhadai Mahato,  
Resident of Village Piparahiya, P.O. Gaura Usari Kala, P.S. Isuapur, District-  
Saran.

... .. Petitioner

Versus

1. The State of Bihar, through the Principal Secretary, Department of Land Reforms and Revenue
2. The Commissioner, Saran Division, Chapra
3. Then Additional Collector, Saran, Chapra
4. The DCLR, Marhaura, District- Saran

**Respondent 1<sup>st</sup> set**

5. Satyadeo Mahto, Son of Late Harif Mahato, Resident of village Piparahiya, P.O. Gaura Usari Kala, P.S. Ishuapur, District- Saran.

**Pre-emptor/ Respondent 2<sup>nd</sup> set**

6. Krishna Mahto, Son of Shama Nand Mahato, Resident of Village Bahrauli, P.O. and P.S. Masrakh, District- Saran.

... .. Vendor/ Respondent 3<sup>rd</sup> set

**Appearance :**

|                    |   |                                                                             |
|--------------------|---|-----------------------------------------------------------------------------|
| For the Petitioner | : | Mr. Nagendra Rai,<br>Mr. Koshalendra Rai and<br>Mr. Navin Nikunj, Advocates |
| For the State      | : | Mr. Sajid Salim Khan, SC 25 with<br>Ms. Prakritita Sharma, AC to SC 25      |

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN  
AMANULLAH**

**ORAL JUDGMENT**

**Date : 17-12-2019**

Heard learned counsel for the petitioner and learned SC  
25 for the State.

2. The petitioner has moved the Court for the following  
reliefs:

*“That the petitioner, through this application, seeks  
the kind indulgence of this Hon’ble Court to grant  
the following reliefs:-*



*To issue appropriate writ/writs, order/orders, direction/directions-*

*I. Declaring / Clarifying that the order abating the BLT Case 567/2018 (Annexure 9) operates from initiation of the pre-emption case before the DCLR till the stage of BLT and the right of pre-emption has become NON-EST by operation of Bihar Act 6/2019.*

*II. Commanding the respondent 2<sup>nd</sup> set not to cause any interference / obstruction in peaceful possession and enjoyment of the petitioner's purchased land bearing portion of plot no. 445 under Khata 89, area 3 Kattha 10 Dhurs situate in village Piparahiya, P.S. Ishuapur, District Saran.*

*III. Grant any other relief deemed fit & proper."*

3. The petitioner has sought clarification in the order dated 03.07.2019 passed by the Bihar Land Tribunal in BLT Case No. 567 of 2018 to the extent that after recording the abatement of the proceeding in view of the provisions of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 2019, (hereinafter referred to as the 'Act'), it should have been held that the abatement was from the pre-emption stage before the DCLR itself as such right of pre-emption had become *non-est* by coming into effect of the aforesaid act.



4. Learned counsel for the petitioner submitted that from the language of the Act, by which Section 16(3) of the main Act has been repealed, further goes to add that pursuant to the repeal the purchase money together with a sum equal to 10% thereof, shall be refunded to the depositors, which clearly indicates that the intention of the legislature was that the right given under Section 16(3) of the main Act itself would go away. Learned counsel submitted that such was with a view to protect the purchase money and 10% thereof, being deposited by the pre-emptor so that such money is refunded to him. Learned counsel submitted that the petitioner's right to move in appeal cannot be curtailed by such repealment and since the lis was continuing and had not attained finality, the entire cause and right to pre-emption, as existing earlier, would abate. Learned counsel drew the attention of the Court to the provisions of Section 4 (1) (c) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956, (hereinafter referred to as the 'Consolidation Act') in which also there is *pari materia* provisions by which every suit and proceeding pending before any Court or authority stood abated in view of the coming into effect of the notification under Section 3 (1) of the Consolidation Act. Learned counsel submitted that such repealment was the subject matter of the case before the Hon'ble



Supreme Court in **Paras Nath Rai and others v. State of Bihar and others** reported as **AIR 2013 Supreme Court 1010**, the relevant being at paragraphs no. 23, 27, 30 and 36. Learned counsel submitted that it has been held that there was a conceptual difference of abatement in civil law and the scheme of the Consolidation Act and the legislature intended that not only the appeal or revision would abate but the judgment, order or decree against which the appeal is pending would also become *non-est* as they would also abate and that would leave consolidation authorities free to adjudicate the claims of title or other rights or interest in land involved in consolidation.

5. Thus, it was submitted that Section 16 (3) of the main Act itself being deleted, no right based on the same could be enforceable and the same would also abate.

6. Learned counsel for the State submitted that the writ petition is misconceived. It was submitted that the parties were represented before the Bihar Land Tribunal when the order dated 03.07.2019 was passed and the petitioner should thus have sought any clarification by the Tribunal itself. It was submitted that the Act by which Section 16 (3) of the main Act was repealed has mentioned the level at which the proceeding is pending and from



the same, it is clear that all connected proceedings would not abate and only at the level at which they are pending would abate.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the contention of learned counsel for the petitioner. For the purpose of consideration of the present issue, it could be appropriate to reproduce the amendment brought in the main Act by which Section 16 (3) of the main Act has been repealed. The same reads as under:

***“The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 2019\****

*(Bihar Act 6, 2019)*

*An Act to amend the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (Bihar Act 12 of 1962)*

*Be it enacted by the Legislature of the State of Bihar in the Seventieth Year of the Republic of India as follows:-*

***1. Short title, extent and commencement.-*** (1) *This Act may be called the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 2019.*

*(2) It shall extend to the whole of the State of Bihar.*

*(3) It shall come into force immediately.*



*2. Amendment in Section 16 of the Act, 1961.- (1) Sub-section (3) of Section 16 of the said Act is hereby repealed.*

*(2) In the Section-16 of the said Act, the following new sub section-(4) shall be added:-*

*“(4)(i) After the repeal of sub-section (3) of Section 16 of this Act, all cases or proceedings pending before the State Government, the Board of Revenue, the Bihar Land Tribunal, the Divisional Commissioner, the Collector, the Additional Collector, the Deputy Collector Land Reforms or in any other Court, shall be deemed to be abated.*

*(ii) Pursuant to the repeal of sub-section (3) of Section 16 of this Act, any purchase money together with a sum equal to 10% thereof, already legally deposited shall be refunded, without any interest, to the depositor.”*

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*Published in Bihar Gazette (Ex.-Ord.) dated 25.02.2019.”*

8. From the aforesaid language of the Act itself, it is clear that all cases or proceedings pending before the State Government, the Board of Revenue, the Bihar Land Tribunal, the Divisional Commissioner, the Collector, the Additional Collector, the Deputy Collector Land Reforms or in any other Court, shall be deemed to be abated. The Court would pause here. The reason why



various authorities have been mentioned in the Act leaves no doubt that the legislature was conscious that there would be stages where such proceeding would be pending and coupled with the fact that only cases or proceeding pending before the authorities shall be deemed to be abated, leaves no scope of any ambiguity or confusion as to what was the intent of the legislature. Once the abatement is with regard to proceeding pending and that too, at various levels, the only interpretation would be that only such proceeding shall abate. As a corollary, the position existing prior to the proceeding which has abated, would be deemed to revive. This is one part of the issue. The other part, as learned counsel for the petitioner has pointed out, is the provision by which any purchase money together with sum equal to 10% thereof, has been directed to be refunded to the depositors. Though learned counsel for the petitioner has tried to emphasize the fact that such provision shows that the original amount on which the right under Section 16 (3) of the main Act was claimed by depositing the purchase money together with a sum equal to 10% thereof, by providing it to be refunded, would mean that the intent of the legislature was to extinguish the right from the very inception, in the considered opinion of the Court, would not be the correct interpretation. The said provision, has been provided for the specific reason that the



same shall be refunded “without any interest”. A money deposited by a person cannot be forfeited by any authority or provision in the statute without justifiable reason. Thus, the question of refund of the money was not an issue, which was required to be brought about in the Act. Rather, such provision has been brought about only for preventing any confusion as to what amount would be ultimately refunded to the depositor. The act provides that the same shall be without any interest of the depositors. In view thereof, the Court finds that such provision would not have any bearing on the issue as to whether the claim itself under Section 16(3) of the main Act would stand abated right from its inception.

9. As far as, the decision in the case of **Paras Nath Rai** (*supra*) is concerned, the Court would only indicate that though the provision of the Consolidation Act may be somewhat similar to the language of the Act, but the basic difference between the two cannot be lost sight of. The difference is that by providing for abatement of all suit and proceeding pending before any Court or authority, whether of the first instance or appeal, reference or revision, has to be read in the context that an alternative was provided for the purpose of adjudicating such rights. This is a stark difference between the provisions of the Consolidation Act and the language and intent of the Act by which, a right which was present



has been taken away. The language of the Act itself clearly states that it shall come into force immediately i.e. with effect from 25.02.2019. The Hon'ble Supreme Court, has also taken this factor into account in the case of **Paras Nath Rai** (*supra*) which would be clear from the following paragraphs:

*“23. In Chattar Singh (AIR 1975 SC 1499) (supra) while the appeal was pending before this Court a notification had been issued under Section 4 of the 1953 Act. By virtue of the operation of Section 5(2)(a) of the said Act, there was a statutory abatement of the suit and other proceedings pending therefrom. The three-Judge Bench referred to the decision in Ram Adhar Singh (AIR 1968 SC 714) (supra) and opined that even appeals pending before this Court would abate consequent upon statutory provision. This Court ruled that the suit and the appeal stood abated and it was open to the parties to work out their rights before the appropriate consolidation authorities.*

*x x x x x*

*27. It is worthy to note that this Court noticed the conceptual difference of abatement in civil law and in the scheme of the 1956 Act, and observed that if the abatement as conceptually understood in the Code of Civil Procedure is imported to Section 4 of the 1956 Act, it would cause irreparable harm and the party whose appeal is pending would lose the chance of convincing the*



*appellate court which, if successful, would turn the tables against the other party in whose favour the judgment, decree or order would become final on abatement of the appeal. The Bench further proceeded to state that regard being had to the same, the legislature intended that not only the appeal or revision would abate but the judgment, order or decree against which the appeal is pending would also become non est as they would also abate and that would leave consolidation authorities free to adjudicate the claims of title or other rights or interest in land involved in consolidation.*

*x x x x x*

*30. From the aforesaid enunciation of law it is crystal clear that once a notification has been published under Section 3 of the Act, every suit and proceeding in respect of declaration of rights or interest in any land lying in areas or for declaration or adjudication of any other rights in regard to which proceeding can or ought to be taken under the Act pending before any court or authority whether of the first instance or of appeal, reference or revision, shall, on order being passed in that behalf by the court or authority before whom such suit or proceeding is pending shall stand abated with a view to ensure the jurisdiction of the authorities under the Consolidation Act remains unhampered and the said authorities are not obstructed by the proceedings in civil courts and their decisions are not impeded by*



*the decisions of the civil courts. It is also vivid that the purpose of the scheme of consolidation is to avoid conflict of jurisdiction in order to confer jurisdiction on the consolidation authorities who are required to exclusively examine the rival claims of the parties. Apart from that there is conceptual difference between statutory abatement and abatement under the Code of Civil Procedure. On the basis of a statutory abatement, the whole proceeding from its inception stands abated because the local law has provided an effective alternative remedy to be perused before an exclusive forum to remedy the grievance raised before the court. It has been further pronounced by this Court that nothing remains to be adjudicated before the civil court and it is apt to note in the case of Satyanarayan Prasad Sah (supra) this Court had held that the High Court should not have nullified the decree of the trial court but should have declared that the proceedings stood abated which meant that civil proceedings came to a naught, that is to say, the proceedings from its commencement stood abated.*

*x x x x x*

*36. The Full Bench was dealing with an appeal directed against the final decree for partition. The question before the Full Bench was whether under Section 4(4) of the Orissa Consolidation of Holdings and Prevention of Administration of Land Act, 1972 (for short 'the 1972 Act') a final decree*



*stood abated. The Full Bench referred to the notification issued under Section 3(1) of the 1972 Act, scanned the language employed in sub-section (4) of Section 4 and came to hold that a final decree proceeding cannot be characterized as a suit or a proceeding for right, title or interest in respect of any land. It has been opined there that Section 4(4) does not include an appeal arising out of a final decree as the same would not declare any right, title or interest of the parties but deal with certain matters pertaining to what has already been declared. Pendency of an appeal against the final decree cannot take away the finality of the preliminary decree which has already declared the rights, title and interest of the parties. We may repeat for clarity that in the said case, the preliminary decree passed in the suit had become final as it was not challenged by way of an appeal. Thus, the factual matrix was quite different. Suffice it to say that in the present case the title appeal was pending against the preliminary decree and an application under Section 4(c) had been preferred. It would have been advisable on the part of the appellate court to record a finding that the entire proceeding of the civil suit stood abated. Unfortunately, the appellate court directed abatement because of non-substitution of the legal heirs of one of the respondents. We are conscious that an order is to be passed on an application filed under Section 4 (c) of the Act, but we do not intend to relegate the matter to that stage*



*as it is obvious that in the suit, right, title and interest and status were involved which do come within the scheme of consolidation. Hence, the suit as well as the appeal abated and resultantly the very commencement of the civil proceeding came to a naught and, therefore, findings recorded in the said proceeding became extinct. The learned Judge dealing with the writ petition as well as the learned Judges deciding the intra-court appeal did not appreciate the lis in proper perspective and opined that the reliance on the findings recorded by the civil court by the revisional authority under the 1956 Act could not be faulted. The said conclusion is wholly erroneous and deserves to be overturned and we do so.”*

10. From the above, it is clear that the Hon'ble Supreme Court, in the background that the abatement led to creation of an alternative forum, came to the conclusion that the legislature intended that all the rights related to the issue be decided by the newly created forum and not obstructed by the proceedings in Civil Courts and their decisions do not come in the way of such decision by the freshly constituted authority and that the purpose of the scheme of consolidation was to avoid conflict of jurisdiction in order to confer jurisdiction on the consolidation authorities who are required to exclusively examine the rival claims of the parties. This is clear from paragraph no. 27 of the aforesaid judgment



where it has been recorded that “the legislature intended that not only the appeal or revision would abate but the judgment, order or decree against which the appeal is pending would also become non est as they would also abate and that would leave consolidation authorities free to adjudicate the claims of title or other rights or interest in land involved in consolidation.”

11. From the same, it is clear that since an alternative forum had been provided for adjudication of the claim, the Hon’ble Supreme Court held by interpreting that all the decisions in the entire chain, right from the original Court till the last stage, would abate. In the present case, a right has been taken away. However, the abatement is only with regard to the proceeding pending at various different levels. In such view of the matter, in the considered opinion of the Court, the decision and reasoning of the Hon’ble Supreme Court in **Paras Nath Rai** (*supra*) would not be applicable in the facts and circumstances of the present case for reasons already discussed above.

12. The Court would further add, at the cost of repetition, that by the Act, a right has been taken away and not replaced by any other right. Moreover, the taking away of the right has also been made effective from 25.02.2019 and there is no retrospectivity attached to the same, for law requires that every



law shall be operative prospectively unless retrospectivity is provided in the law itself, which has not been done in the present case.

13. Once the Court finds that the abatement is only with regard to the proceeding which is pending, upon such abatement, the situation/ position which was existing prior to initiation of such proceeding, would automatically stand revived, which may include either an order in favour of the depositor who claims pre-emption or in favour of the purchaser, in whose favour there may be a decision of the Court/ authority just below the authority/ Court where the matter was pending as on 25.02.2019.

14. Accordingly, for reasons aforesaid, the application stands dismissed.

15. However, if the petitioner has any remedy available to him, in accordance with law, it shall always be open to him to avail of the same.

**(Ahsanuddin Amanullah, J.)**

Vikash/Rahul

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